

In re) Fair Hearing No. 9334
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

1. The petitioner is a 37-year-old man with a seventh grade education, which he completed at age 15. He has worked in the past as a laborer but never for longer than 4-6 months in the last 15 years. Since a work accident in 1976, the petitioner has worked only a few weeks per year, never more than 3-4 weeks at the same job and typically for no more than a few days.

3. As early as 1974, the petitioner was diagnosed as suffering from chronic alcoholism. Since that time he has

been treated at the hospital numerous times for health problems thought to be entirely secondary to his alcoholism including gastritis and ulcers, esophagitis, megaloblastic anemia, pancytopenia, atrial fibrillation, pericardial effusions, neuropathy of the extremities and chronic liver disease. All of these problems have been resolved through treatment although they recur with some frequency. The petitioner currently suffers from the physical effects of alcoholic enteritis which make him weak and nauseous. Liver tests show that at the very least, he has acute alcoholic hepatitis (inflammation of and increased damage of liver cells secondary to excess alcohol intake) and quite possibly cirrhosis of the liver although he has not had the liver biopsy necessary to confirm that potential diagnosis.

4. The petitioner has had very little treatment for his alcoholism over the years, tends to deny his problem, and has been generally resistant to the help offered to him.

He has had periods of sobriety based on his own efforts lasting a few months to a year or more in the past but no lasting success. Over the course of the last year, the petitioner has had all three of his young children removed from his (and his wife's) custody due to abuse and negligence. In order to regain custody, the petitioner must undergo counseling and a detoxification program which he is currently undertaking. Prior to the start of the program on November 22, 1989, the petitioner was drinking 3 quarts of beer per day. An attempt to detoxify in April of

this year met with failure when the petitioner abandoned the program.

5. The petitioner was examined by a psychiatrist at the request of DDS for purposes of evaluating his mental condition. That psychiatrist had examined the petitioner on one prior occasion four years earlier and his opinion was virtually the same. He diagnosed the petitioner as suffering from chronic alcoholism and a passive, dependent personality. He opined that his condition was severe, that the petitioner has little insight into its severity, that he has poor judgement, vague paranoid thoughts, is aggressive and relies heavily on denial, projection and rationalization with regard to his addiction and need for treatment. As a result of his alcoholism, the psychiatrist opined that the petitioner would likely have trouble being productive consistently, following directions, relating to peers and authority, concentrating, and that his work attendance was likely to be poor. He also observed that the petitioner's conversation suggested a fear of proximity to other people and that he described a very limited daily life, devoid of interests, hobbies and social activities, and consisting mainly of staying in bed and watching TV with some occasional light housework. His prognosis is thought to be very poor because he has been so resistant to treatment over a long period of time in spite of the development of life threatening complications. As the diagnosis and opinions of the psychiatrist were based on his own expertise, his two

lengthy contacts with the petitioner, and are uncontroverted in the evidence, they are found to be credible and adopted as findings of fact.

6. Based on evidence presented by the petitioner, his wife and/or the affidavit of a social worker involved in the CHINS actions by which SRS took his children into custody, it is found that the petitioner spends most of each day drinking, vomiting, watching TV and sleeping. Occasionally he does some light housework, but he does not cook and eats little when he is drinking. He has failed to attend 14 of the 19 scheduled visitations with his children. His children were removed from his custody in large part because he failed to adequately supervise them when they were in his care due to intoxication and physically abused them while in an intoxicated state, which was reported by one of his children to be "all the time". When he is released from "detox" he will live in a transient hotel on general assistance because he cannot get along with his mother with whom he currently lives.

7. The petitioner denies that alcoholism has played a role in his work life although he admits to drinking on the job and at times being unable to complete tasks. He blames his lack of employment success on his back problem. The psychiatrist who examined him opined, however, that the petitioner lacked insight into the role that alcohol played in his inability to sustain employment and stated "one could postulate that his work activities must indeed have suffered

from his heavy consumption of alcohol", particularly his concentration, general efficiency and frequency of employment and concluded that alcohol "is playing a significant role in his ability to maintain employment." Based both on the petitioner's scarce work history and the psychiatrist's opinion, it is found that the petitioner's testimony in this regard is not credible and that his chronic severe alcoholism has been a significant factor in his ability to sustain employment in the past.

8. There is no reason to believe that the petitioner's current detoxification program will immediately or at any time in the near future resolve the petitioner's problems related to his addiction of over 20 year's standing.

ORDER

The decision of the department is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The Social Security Regulations find substance addiction disorders (i.e., alcoholism) to meet the level of severity in the Listing of Impairments if they result in a diagnosis, symptoms and restrictions similar to several physical and mental disease listings including the listing under "personality disorders". See 20 C.F.R. § 404, Subpart P, Appendix I, Part A, Regulation 12.09.¹ The listing for that disorder provides as follows:

12.08 PERSONALITY DISORDERS:

A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:

1. Seclusiveness or autistic thinking; or
2. Pathologically inappropriate suspiciousness or hostility; or
3. Oddities of thought, perception, speech and behavior; or
4. Persistent disturbances of mood or affect; or
5. Pathological dependence, passivity, or aggressivity; or
6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

AND

B. Resulting in three of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to compete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

The evidence shows, and DDS agrees in its decision, that the petitioner meets Part A of this test because he has exhibited deeply ingrained, maladaptive patterns of behavior associated with both pathological dependence, passivity, or aggressivity, and intense and unstable interpersonal relationships and impulsive and damaging behavior.

The petitioner was denied because DDS did not feel that as to Part B of the listing, his restrictions were "marked" in category one, or that he had any problems with the other three categories at all. That analysis is unsupported by the evidence which clearly indicates that the petitioner has severe deficiencies in all four categories. In category one, the evidence showed that the petitioner does little but drink and feel sick all day. In that state he cannot care for his children, or for himself (he does not eat) and pursues virtually none of the activities (shopping, cooking, hobbies) which is usually associated with daily living. In category two, the evidence clearly and painfully shows that the petitioner is unable to socially function in an appropriate manner with his own children who appear, besides his wife, to be among the few human beings with whom the petitioner has regular contact. There is also evidence that

the petitioner was uncomfortable with and fearful of people which is further confirmed by his lack of friends.

With regard to category three, there is uncontroverted evidence from the consulting psychiatrist (who was not retained by the petitioner) that his chronic alcoholism greatly affects his ability to concentrate and produce in general. Furthermore, the evidence shows that in his alcoholic state, the petitioner was unable to attend over 70% (14/19) of the scheduled visitations with his children, a fact which casts grave doubt on his ability to complete any task in a timely manner.

Finally, although the petitioner denies the role of alcohol in his past employment history, the fact that he has an extremely brief work history coupled with his psychiatrist's opinion that the severity of his alcoholism had to have a significant impact on his ability to sustain employment, it must be concluded that the petitioner's repeated inability to keep a job for more than a few days or weeks was due in large part to his chronic alcoholism.

Based on the considerable evidence in this matter, it must be concluded as a matter of law, that the petitioner meets the listings at Part A, paragraphs 5 and 6 and Part B, paragraphs 1 through 4 in regulation 12.08 above and must, therefore, be determined to be disabled as that term is defined in the Social Security (and Medicaid) regulations. 20 C.F.R. § 416.920(d).

FOOTNOTES

¹Addiction to alcohol or drugs is not by itself a basis for determining disability under the regulations. See 20 C.F.R. § 416.925(e).

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